XI-HC—78

(15)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....CrA No.512.... सन् 200 |

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT: ~~Mithla Das, S/o Ghasiya~~ Das Panika, Aged 38 years, Occupation – Agriculture, R/o Village Lota Damha Toli, P.S. Bagicha, District Jashpur Nagar.

- Versus -

RESPONDENT: State of Chhattisgarh, Through In-charge Police Station Bagicha.

(Appeal under Section 374 (2) of the Code of Criminal Procedure)

Division Bench: - Hon'ble Shri L.C. Bhadoo & Hon'ble Shri Dhirendra Mishra, JJ.

18-6-2007:-

Shri Abhay Tiwari, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 8-6-2001 passed by the 2nd Additional Sessions Judge, Jashpurnagar (Fast Track Court) in S.T. No.141/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., for committing murder of Paras Das, sentenced him to undergo imprisonment for life & to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo imprisonment for 5 months.

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आदेश पत्रक (पूर्वानुबद्ध)

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Case of the prosecution, in brief, is that Sanantri Bai, wife of deceased Paras Das, gave merg intimation Ex.-P/8 in the Police Station Bagicha to the effect that at about 9 p.m. in the night of 16-4-2000 she along with her husband Paras Das was sleeping in the Parchi after taking their dinner whereas, her brother-in-law Mithila Das and his wife Kulesari Bai were sleeping in the eastern side room. At about 10.30 p.m. in the night, all of a sudden, Mithila Das came with axe and attacked her husband on the head and neck, as a result of which she woke up. She saw that the accused ran away. Injuries were on the left side of the neck and back side of the neck. Blood was oozing out of the injuries. When she raised screams, her brother-in-law Rameshwar, sister-in-law Phool Sai Bai, mother-in-law and others came. Receiving this report, Station House Officer, P.S. Bagicha, registered First Information Report Ex.-P/7 and left for scene of occurrence. The Investigating Officer prepared inquest Ex.-P/9 on the body of Paras Das. Site plan Ex.-P/2 was prepared by Halka Patwari. While in the police custody, the accused gave memorandum Ex.-P/3 regarding axe, weapon of offence, in pursuance of that, under Ex.-P/4 axe was seized. Lungi of the accused was seized under Ex.-P/5. The body of Paras Das was sent for postmortem examination to the C.H.C., Bagicha under Ex.-P/10 where Dr. C.D. Bakhla (PW-6) conducted postmortem, prepared postmortem report Ex.-P/16 and opined that cause of death was neurogenic and haemorrhagic shock due to injuries to vital organ. Nature of death is homicidal. Axe in question was sent to the doctor for examination under Ex.-P/13, based on that, doctor gave his opinion under Ex.-P/18.

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After completion of the investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Jashpurnagar, who in turn committed the case to the Sessions Judge, Raigarh, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined 7 witnesses. Statement of the accused was recorded under Section 313 Cr.P.C. in which he denied material appearing against him in the prosecution evidence and stated that witnesses have deposed against him on account of land dispute.

Learned Additional Sessions Judge after hearing learned counsel for the respective parties convicted and sentenced the accused as aforementioned.

We have heard Shri Abhay Tiwari, learned counsel for the accused/ appellant and Shri U.N.S. Deo, Additional Public Prosecutor for the State/ respondent.

Shri Abhay Tiwari has not disputed homicidal death of Paras Das. Moreover, Dr. C.D. Bakhla (PW-6) has stated that on 17-4-2000 he conducted postmortem on the body of Paras Das. He noticed following injuries:-

(i) Incised wound in the size of 10 x 4 x 6 cm in the orbital area over left ear, on account of that injury orbital bone was fractured.

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(ii) Incised wound in the size of 13 x 2 x 4 cm on the first cervical bone on occipital area. Cervical bone was fractured.

(iii) Light incised wound in the size of 7 x ½ cm on the scapular region.

Cause of death was injury to vital organ, neurogenic and haemorrhagic shock. Death was homicidal in nature. He has further stated that he examined weapon of offence i.e. axe. After examination, he reached to the conclusion that it was possible to cause injuries with axe in question found on the body of the deceased. PW-7 Sanantri Bai has also stated that the accused attacked the deceased with axe. Therefore, in view of the ocular and medical evidence, it is established that death of the deceased was homicidal in nature.

As far as involvement of the accused/appellant in the crime in question is concerned, Shri Abhay Tiwari, learned counsel for the appellant, argued that on account of darkness of the night it was not possible for Sanantri Bai to identify the person who attacked the deceased, therefore, the prosecution has not been able to establish that the accused was author of the crime in question. He also argued that Sanantri Bai has stated that the accused attacked only once whereas, 3 injuries were found on the body of the deceased. Therefore, on account of this fact also evidence of Sanantri Bai cannot be relied upon being a single witness.

On the other hand, Shri U.N.S. Deo, Additional Public Prosecutor, supported the judgment of the trial Court.

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	In order to appreciate arguments advanced by learned counsel for the respective parties, we have perused record. PW-7 Sanantri Bai, wife of the deceased, has stated that in the night at about 10 p.m. she along with her husband was sleeping on the ground in Parchi, at that time, the accused, all of a sudden, came and attacked with axe on the parietal region and neck, as a result of which her husband sustained injuries on the neck and above left ear. There was cut injury on account of attack made by the accused. There was deep wound. The accused after making assault with axe on her husband, ran away. The accused is brother-in-law. She raised cries. Hearing her cries, her another brother-in-law Rameshwar, mother-in-law Suda Bai, Tilo, Jhunu, Parsan, Phuleshwari, Dhanmetbai, Rameshwari came on the scene. She disclosed to all of them that Mithila Das ran away after attacking the deceased. She lodged the report Ex.-P/8, based on that first information report Ex.-P/7 was registered. On account of land dispute the accused attacked her husband. In cross-examination, she has stated that she saw the accused while running away. It is incorrect to say that she ran away after seeing injuries on the body of her husband. In fact, she raised screams. She has further denied that on that day the accused had gone to his in-laws' house. In fact, she along with her husband was sleeping in the Parchi whereas, the accused, his wife and children were sleeping in the room. She lodged the report in the same night. It is incorrect to say that she lodged the report in order to implicate the accused in a false case. In cross-examination of this witness, defence has not been able to elicit any circumstance which suggest that this witness was not able to identify the accused. In cross-examination, she has categorically stated that the accused sleeping in the same house in a separate room. The	

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incident took place at about 10.30 p.m. in the night and report was lodged at about 1.10 a.m. in the same night i.e. about within 2 hours 40 minutes, as per the first information report, police station is at a distance of 2 km from the place of occurrence. Therefore, in view of this fact, FIR was lodged with all promptness. In that FIR, the name of the accused has been categorically mentioned.

PW-2 Govind Das has stated that in the fateful night i.e. Sunday night at about 10 p.m. he was at his residence, at that time the accused came running towards their house and said that Dai go to the house as thief is taking buffalo. This fact corroborates the evidence of Sanantri Bai that the accused came from his house after attack and gave misleading information to Govind Das and others. Apart from that, the accused himself has admitted in his statement under section 313 Cr.P.C. that land dispute was going on between the deceased and the accused being brothers. PW-7 Sanantri Bai has also stated that there was land dispute between the deceased and the accused. PW-1 Rameshwar Das, who is the brother of the accused, has stated that on account of land dispute the accused attacked his brother Paras Das. Hence, in the first instance, there was animosity among the accused and the deceased on account of land dispute, therefore, there was motive behind attack. Sanantri Bai was sleeping with her husband when the accused made attack. She has categorically stated that she saw the accused running away from that place. From the evidence of PW-2 Govind Das, it is established that at the time of incident the accused went towards their house and informed Dai to go to the house as thief is taking buffalo. Apart from that axe in question was seized at the instance of the accused, same was sent to the

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doctor for examination. The doctor after examination gave report Ex.-P/18 in which he has stated that it was possible to cause injuries with axe which were found on the body of the deceased. Cumulative effect of the aforesaid evidence establishes involvement of the accused in the crime in question.

As far as second argument of Shri Tiwari is concerned, Sanantri Bai has not disputed (stated) in her evidence that only once the accused attacked the deceased. She has simply stated that the accused after attacking with axe ran away. The doctor has stated that it was possible to cause injuries with axe which were found on the body of the deceased, therefore, we do not find any substance in this argument.

For the foregoing reasons, we are of the considered opinion that involvement of the accused in the crime in question is established. As per the evidence of prosecution, the accused attacked the deceased on account of land dispute that too with axe on vital organ of the body i.e. parietal region, on account of that cervical bone and orbital bone were fractured and the deceased died instantaneously. Therefore, intention of the accused to cause death of his own brother was writ large.

In the result, we do not find any illegality or infirmity in the judgment of the trial Court. The appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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